

No. 14864

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

JACK DAVID WINGER,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLANT'S REPLY BRIEF.

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I.

Federal Appellate Courts May Notice Errors and, to Prevent Serious Injustice, May Consider the Sufficiency of Evidence and Reverse a Conviction in the Absence of a Motion for Judgment of Acquittal at the Close of All of the Evidence.

The above principle has been followed by the Supreme Court of the United States and by various United States Courts of Appeals. In *United States v. Atkinson* the Supreme Court said:

“In exceptional circumstances, especially in criminal cases, appellate courts, in the public interest, may, of their own motion, notice errors to which no exception has been taken, if the errors are obvious, or

if they otherwise seriously affect the fairness, integrity, or public reputation of judicial proceedings.”

United States v. Atkinson (1936), 297 U. S. 157, 160, 80 L. Ed. 555, 56 S. Ct. 391.

To the same effect, see:

Knight, et al. v. United States (5 Cir., 1954), 213 F. 2d 699, 700;

United States v. Jonikas (7 Cir., 1951), 187 F. 2d 240, 241;

Lockhart v. United States (4 Cir., 1950), 183 F. 2d 265, 266;

Malatkofsky v. United States (8 Cir., 1950), 179 F. 2d 905, 910.

See also:

12 *Cyclopedia of Federal Procedure* (3d Ed.), Secs. 51.67 to 51.69, and authorities collected there.

The spirit of the above principle is reflected in Rule 52(b), Federal Rules of Criminal Procedure, as follows:

“(b) *Plain Error*. Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.”

Respectfully submitted,

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